

REMARKS

Applicant has carefully reviewed the Office Action dated June 2, 2008, and responds with the foregoing amendments and following remarks. Upon review and reconsideration, it is believed the Examiner will agree that all claims patentably distinguish over the art of record and should be allowed.

Claim 1 now reads on a display apparatus comprising a flexible display member including a flexible electronic pixel array and a control unit capable of controlling the flexible electronic pixel array. The display member is in the form of a strip of a size suitable to be positioned around a limb of a user. The display member is removably attached to the control unit without using screws, such that the display member can be detached and replaced with an alternative design or size to suit the user. Claim 37 is also amended to require a display member removably attached to a control unit positioned at one end of the display member without using screws. Support for this limitation is found in Applicant's Figure 3, which shows the display member attached to the control unit without the use of screws, and thus provides support for the concept being claimed.¹

In the Action, the Examiner rejects claims 1 and 37 as being directed to obvious inventions in view of the Freeman (U.S. Patent No. 5,931,764) and Nishimura (U.S. Patent No. 4,083,177) references. Having carefully considered these references, Applicant respectfully submits that they do not serve as the requisite substantial evidence establishing that a skilled artisan would find the invention of present claims 1 or 37 obvious.

Turning first to the primary Freeman reference, it fails to disclose a display

¹ *Behr v. Talbott*, [No West Cite] 27 USPQ2d 1401 (BPAI 1992) ("The test for determining compliance with the written description requirement is whether the disclosure of the application as originally filed, including the original drawings, would reasonably have conveyed to the artisan that the inventor had possession at that time of the later claimed subject matter, rather than the presence or absence of literal support in the specification for the claim language.").

member removably attached to a control unit, a point with which the Examiner has expressly concurred (Office Action of 3/26/07, p. 6, lines 1-2). To supply this missing teaching, citation is made to the secondary Nishimura reference as allegedly disclosing a “control unit” 3 releasably secured to a display member. According to the Examiner, it would have been obvious to a skilled artisan “to modify the display apparatus of Freeman with an easily removable display as taught by Nishimura so that the display can be replaced without disposing of the more expensive circuitry or controlling components.”

Applicant respectfully submits that a skilled artisan would not be led to combine the features of these references for the reasons proposed by the Examiner. The device 10 of Freeman includes a flexible LCD display strip 12 and other electronic components, none of which is characterized as being “removably attached” to each other in any way.² Nishimura discloses an arrangement intended to make an LCD cell more easily removable, e.g. for repair. Nishimura dates from 1978, or thirty years ago, so the principle of making readily-removable LCD units for ease of repair/replacement no longer carries the same cost advantages.

Regardless, the self-contained LCD cell 9 of Nishimura can only be removed from the circuitry 3 by removing screws 11 and other retaining components (see column 6, lines 38 to 46). Indeed, an expressed objective of Nishimura’s invention is to “provide a liquid crystal display wrist watch in which one can easily replace a liquid crystal cell with a new one *by loosening* screws” (col. 5 lines 31-34; emphasis added). As noted above, claims 1 and 37 now require that the removable attachment of the display member is achieved “without using screws.” Advantageously, this avoids the need for tools to change the display member, and thus facilitates the use of the alternate size or design set forth in the claims.

² See *Dorel Juvenile Group, Inc. v. Graco Children's Prods.*, 429 F.3d 1043, 1045 (Fed. Cir. 2005) (affirming a holding that the claim term “removably attached” referring to a seat “carr[ies] with [it] an implication that the detachment or unsecuring process *not do violence to the seat.*”) (emphasis added).

Furthermore, no evidence in either Freeman or Nishimura, or otherwise in the record, establishes that any “display member” should be made readily removable from any control unit so that it can be replaced “with an alternative design or size” of a display member to suit the user. The teaching of Nishimura is limited to merely removing a liquid crystal cell, generally. Indeed, a reason Nishimura proposes a removable cell is because it is normally replaced with the same exact one, rather than an alternative size or design. Thus, the Nishimura reference actually discourages providing an array of alternative display members that a user can pick and choose from for use as fashion accessories, and Freeman is completely silent as to such.

In final analysis, Nishimura does not disclose any control unit capable of controlling a flexible pixel array that is removably attached without screws, and neither does Freeman (by the Examiner’s own admission). Accordingly, these references, even if combined, do not teach each and every limitation of the inventions of claims 1 and 37, as is required for a *prima facie* case of obviousness. In light of the foregoing, favorable reconsideration of amended claims 1, 37, and all claims depending therefrom is therefore respectfully requested.

Turning to claims 39 and 41, these stand rejected based on the combined teachings of Freeman and GB 2,373,990 to Broderick. Freeman as discussed above is concerned with a general purpose display apparatus and uses a sophisticated type of display technology, as compared with the simple LED arrangement used in Broderick for use in connection with a safety arm band used to increase the visibility of the wearer. In proposing why it would be “obvious” to combine the teachings of these references, the Examiner contends that it would have been obvious “to modify the display member of Freeman with thin strips that are transversely concave so that the armband prevents moisture penetration and has a self-coiling nature without the use of clasps.”

In *KSR International Co. v. Teleflex, Inc.*, 550 U.S. ___, 82 USPQ2d 1385 (2007), the U.S. Supreme Court reaffirmed the basic objective analysis for determining obviousness as stated in *Graham v. John Deere Co.*, 383 U.S. 1 (1966), emphasizing that

“rejections on obviousness cannot be sustained by mere conclusory statements.” Rather, “there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *KSR*, 550 U.S. at ___, 82 USPQ2d at 1396 (*quoting In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006)).

Applicant respectfully submits that, for several reasons, the statement made in support of the rejection does not constitute the necessary articulated reasoning with a rational underpinning necessary to create a *prima facie* case of obviousness. First of all, the argument that making an armband “with thin strips that are transversely concave” to prevent “moisture penetration” is not a reason for combining the teachings of the Freeman and Broderick references at all. A plastic band that is not transversely concave would have the same resistance to moisture penetration as one made of plastic and being transversely concave. Indeed, Freeman already teaches forming the strap 10 from a plastic material (see, e.g., claim 10), which would already prevent moisture penetration. Simply put, providing resistance to moisture penetration is not a rational underpinning for any reason for combining the teachings of the Freeman and Broderick references.

The other “reason” for the combination is to make the Freeman display member “self-coiling without the use of clasps.” While this might be a **result** of combining the teachings of these references, this is not a **reason** for combining them. In other words, there is no rational underpinning provided for providing a transversely concave band as claimed in the arrangement of Freeman. Freeman proposes the use of Velcro brand fasteners for connecting the band, which thus avoids using “clasps” but without being self-coiling. This, avoiding clasps is not a “reason” for providing a self-coiling feature at all, and cannot provide the rational underpinning necessary to sustain the rejection of claims 39, 41, and their progeny.

A similar analysis applies to the rejections of many of the dependent claims. For example, in rejecting claims 3 and 13 over Freeman, Nishimura, and U.S. Patent No. 4,060,185 to Kuroda, the Examiner posits that “it would have been obvious to . . . modify the display member of Freeman with the sufficiently stiff material as taught by Kuroda so

that the display member can be easily put on or removed as well as enhance the aesthetics of the wrist band member.” Neither ease of use nor aesthetics qualifies as a reason for combining the teachings of these references. Indeed, as noted above, Freeman uses Velcro type fasteners, which would already allow the band to be “easily put on or removed” and afford “enhanced” aesthetics. Hence, a proper basis for a holding of obviousness is lacking.

In light of the foregoing, Applicant respectfully requests reconsideration and allowance of all pending claims. In the event any further issue requires redress, the Examiner is invited to contact Applicant’s counsel by telephone. Also, in the event any fee is due, please debit it from Deposit Account 11-0978.

Respectfully submitted,

KING & SCHICKLE, PLLC

A handwritten signature in black ink, appearing to read 'A. Dorisio', with a stylized flourish extending to the right.

Andrew D. Dorisio
Registration No. 41,713

247 North Broadway
Lexington, KY 40507
(859) 252-0889